

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 17 CVS 1747

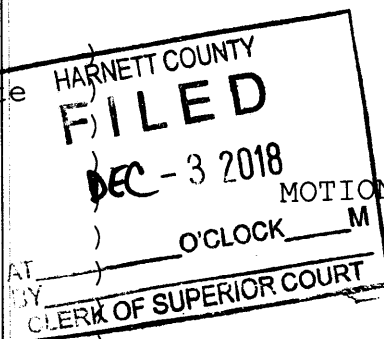
DOLLIE GRIGGS, as
Administrator of the Estate
of CHRISTIAN GRIGGS,

Plaintiff,

v.

WILLIAM PAT CHISENHALL,

Defendant.



MOTION TO EXCLUDE

Pursuant to North Carolina Rules of Evidence 702 and 403, the Defendant seeks the entry of an Order excluding those portions of his and Dr. Lauren Scott's opinions that are not sufficiently relevant or reliable for the following reasons: this witness does not have the qualifications to provide such opinions, the expert's proffered method of proof are not sufficiently reliable as an area for expert testimony, are not based on any facts in this case, are speculative and are not helpful to the jury's determination of the facts.

Lauren Scott

It is expected that Dr. Scott will testify as to the autopsy that she conducted. Certainly this witness can testify as what she found during the autopsy, the cause of death and that the same was a homicide; however, in an affidavit supplied by Plaintiff's attorney and previously filed with the court, Dr.

Scott opines that "[T]he position of the Decedent's body in contrast to a standing shooter is generally inconsistent with a claim of self-defense." A copy of the affidavit is attached hereto and incorporated herein as Exhibit "A".

This testimony is improper as Dr. Scott is making a conclusion that is outside the scope of her expertise. In State v. Daughtridge, ____ N.C. App. ____, 789 S.E.2d 667 (2016), the Court of Appeals held that where a medical examiner's opinion that a death was homicide rather than suicide was based largely, if not entirely, on his interpretation of non-medical information conveyed to him by law enforcement officers, legitimate concerns were raised about admissibility of said testimony. The court continued that "it is difficult to escape the conclusion that his opinion on this specific issue was based not on such medical evidence but instead on statements from law enforcement officers about the results of their investigation-information that bore little, if any, connection to his own observations stemming from the autopsy."

Further, the court found that the State failed to adequately explain how the witness was in a better position than jurors to evaluate whether the results of the officer's investigation were more suggestive of a homicide than a suicide so that under the principles set forth in McGrady; his opinion failed to pass muster under the new test governing the admissibility of expert

witness opinion testimony that is now required in light of the 2011 amendment to Rule 702.

As this was a criminal case where the defendant failed to object to the testimony, the court did not believe this testimony to be rise to the level of plain error and the defendant's conviction was not overturned.

In the case at bar, there is no record of Dr. Scott conducting any investigation, interviewing any witnesses, performing any tests, simulations or reconstruction, or reviewing any facts about the incident to state that the Defendant was not acting in self-defense of himself or his daughter at the time of the incident.

Dr. Scott's opinion whether the Defendant was acting in self-defense at the time of the shooting is not anymore helpful to the jury and she is in no better position than jurors to evaluate whether the results of the Sheriff's Department officers' investigation finding that the Defendant was acting in self-defense at the time were correct.

Further, this opinion is outside the official duties of the medical examiner of the State of North Carolina. N.C.G.G. §130A-379 provides as follows:

Duties of the Chief Medical Examiner.

The Chief Medical Examiner shall perform postmortem medicolegal examinations as provided in this Part. The Chief Medical Examiner may, upon request, provide instruction in

health science, legal medicine and other subjects related to his duties at The University of North Carolina, the North Carolina Justice Academy and other institutions of higher learning.

In addition, N.C.G.S. §130A-385 states:

Duties of medical examiner upon receipt of notice; reports; copies.

(a) Upon receipt of a notification under G.S. §130A-383, the medical examiner shall take charge of the body, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the Chief Medical Examiner on forms prescribed for that purpose.

The statute further provides:


b) The medical examiner shall complete a certificate of death, stating the name of the disease which in his opinion caused death. If the death was from external causes, the medical examiner shall state on the certificate of death the means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide, execution by the State, or undetermined. The medical examiner shall also furnish any information as may be required by the State Registrar of Vital Statistics in order to properly classify the death.

While this witness might be entitled to an opinion, the statute only provides that it is an opinion as to the cause of death. There is no provision in the law for this witness to do anything other than perform postmortem medicolegal examinations and determine the cause of death. The statute is silent as to the medical examiner providing an opinion other than as stated therein. As this witness was not present at the time of the incident and has conducted no independent investigation there is

simply no basis under the law for this witness to be allowed to opine that "[T]he position of the Decedent's body in contrast to a standing shooter is generally inconsistent with a claim of self-defense" so that testimony should not be permitted to be heard by a jury.

WHEREFORE, this Defendant William Pat Chisenhall respectfully requests that the Court grant this motion and enter an order excluding prejudicial statements or evidence and for what other and further relief the court deems just and proper.

This the 3 day of December, 2018.



Robert E. Levin
Attorney for Defendant

HAYWOOD, DENNY & MILLER, L.L.P.
Attorneys at Law
P.O. Box 51429
Durham, NC 27717
Telephone: 919-403-0000
Facsimile: 919-403-0001